

Exhibit No.: _____
Issues: Transportation Tariff
Witness: Raymond L. Gifford
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Sponsoring Party: Constellation NewEnergy-Gas Division, LLC
Symmetry Energy Solutions LLC
File No.: GR-2022-0179

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILE NO. GR-2022-0179

SURREBUTTAL

TESTIMONY

OF

RAYMOND L. GIFFORD

ON BEHALF OF

CONSTELLATION

NEWENERGY-GAS DIVISION, LLC AND

SYMMETRY ENERGY SOLUTIONS, LLC

November 4, 2022

1 **Q. Are you the same Raymond Gifford who pre-filed Direct Testimony on September 9,**
2 **2022?**

3 A. Yes, I am. This Surrebuttal Testimony responds to points made in rebuttal by Staff Witness
4 Anne M. Crowe and Spire Witness Justin Powers. This testimony continues to support the
5 positions of retail gas marketers (RGMs) Constellation New Energy – Gas Division LLC
6 (Constellation) and Symmetry Energy Solutions, LLC. (SES).

7 **Q. What is the short version of your surrebuttal?**

8 A. There is something of an “if it ain’t broke, don’t fix it” position offered by witnesses Powers
9 and Crowe. But, the problem is that we all learned during Winter Storm Uri that the tariff
10 provision is broken, we know it, and therefore must fix it.
11 Powers’s and Crowe’s rebuttal should not change the Commission’s mind to reform the
12 operational flow order (OFO) tariff language to better serve the public interest and result in
13 outcomes that are just and reasonable. To the contrary, the rebuttal testimony filed to support the
14 status quo OFO tariff language is unconvincing and does nothing to avoid the problems
15 identified in my Direct Testimony or experienced in Winter Storm Uri. The “multiplier times
16 index price” penalty structure Spire currently uses and proposes to continue using in this rate
17 filing will continue to have effects that may discourage RGM service on the Spire system and
18 undermine Missouri regulatory policy encouraging such services to serve transportation and
19 school district customers. In the end, all Missouri customers on Spire’s system will be harmed
20 by the persistence of such an OFO penalty structure. To reiterate what I said in my Direct
21 Testimony, OFO penalty provisions should be proportional to remedy potential harm to the gas
22 system and create calibrated incentives for RGMs to neither over- or under-deliver gas. The

23 tariff revision proposals of Constellation and SES, attached hereto as Schedule RLG-03 do that;
24 the *status quo* biased preferences of Spire and Staff do not.

25 **Q. What is your disagreement with Spire Witness Mr. Powers?**

26 A. Mr. Powers' raises the specter of Spire being responsible for upstream OFO penalties to
27 interstate pipelines because of actions by marketers, and offers that Spire's provision of
28 "multiplier times index OFO penalty" mirrors that of upstream provider Southern Star Central
29 Pipeline. He is simply wrong. Spire's current tariff Sheet No. 16.6.A.11 already provides that
30 "[i]n the event that this transportation service causes the incurrence of demand charges, standby
31 charges, reservation charges, penalties or like charges from the Company's gas suppliers or
32 transporters, which charges are in addition to charges for gas actually received by the Company,
33 such charges shall be billed to the customer in addition to amounts for service rendered
34 hereunder." This protection for Spire from responsibility for upstream penalties is repeated,
35 verbatim, at Spire's proposed tariff Sheet No. 9.17.E.5.

37 **Q. Why is the Constellation/SES "fixed penalty plus incremental cost incurred" OFO penalty superior?**

38 A. Because it better meets the goals that witness Powers maintains he is trying to achieve
39 without the downsides of the multiplier penalty format. Powers says the goal should be: "[t]he
40 Company then must be made whole from any and all penalties resulting from the OFO." [Powers
41 Reb. 5:14-15]. The "fixed penalty plus incremental cost" OFO penalty does that because it
42 allows Spire to recover its incremental costs incurred, which would include OFO penalties from
43 upstream pipelines. Thus, Mr. Powers's concern expressed in his testimony on pages 5 and 6 of
44 his Rebuttal Testimony misunderstands the nature of the Constellation/SES alternative. Again,
45 this proposed OFO penalty method maintains proportionality of incentives, is not subject to wild,

46 ruinous swings based on unforeseen events and makes Spire whole from upstream penalties, if
47 that is its main concern.

48 **Q. What about the contention of Mr. Powers and Ms. Crowe that the “multiplier times index”**
49 **OFO penalty must be kept so that shippers do not prioritize deliveries to non-Missouri**
50 **customers Crowe [3:7-]?**

51 A. The concern is that an RGM will redirect its gas supply to the LDC with the highest OFO
52 penalties to the detriment of the LDCs with the lower OFO penalties. The logic, therefore,
53 would be that Spire needs to maintain potentially high OFO penalties to keep the RGM gas
54 coming to its system.

55 But this is a rationale that proves too much and admits of no apparent limiting principle.

56 By the “keep shippers eager to sell gas into Missouri” rationale, any penalty – *no matter how*
57 *draconian* – can be justified and indeed would be encouraged through this line of thinking.

58 Indeed, at an extreme, it would create incentives for a tariff race to see who can potentially
59 impose the most severe penalties to keep the shippers’ incentives strong to sell gas into

60 Missouri. It gets back to what I offered in my Direct Testimony that it is the equivalent of

61 “randomly imposing the death penalty for jaywalking” quip. [Gifford Direct 9:4-5]. One

62 could certainly imagine such a legal rule as creating immense incentives against jaywalking.

63 But it ignores the equally important values of proportionality and calibrating the penalty to

64 the harm suffered. And, a race to create the most extreme penalty could, at some point, result

65 in the loss of credibility that such a penalty would ever be actually collectible. The multiplier

66 times index OFO has the potential to completely lose sight of these important regulatory

67 principles; the fixed price plus incremental cost OFO method adheres to them.

68 **Q. What about Witness Crowe's contention that your fixed penalty plus incremental cost**
69 **would not alleviate Spire's potential liability to SSC for OFO penalties because of the failure**
70 **of an RGM to deliver supply to its customers? [Crowe 6:4-18.]**

71 A. I find it to be a curious objection because a fixed penalty *plus incremental cost* does
72 exactly what she says she wants: Spire to be held harmless from upstream penalties
73 calculated based on a multiplier times index method. The incremental costs Spire could
74 recover from RGMs who violate the OFO clause would include those upstream OFO
75 penalties. What is more, as I have mentioned already, this method would match the harm to
76 the foul, as opposed to create outsized harms not proportionate to the foul.
77 To the extent the preference for a multiplier times index penalty is easier to administer and
78 allegedly would not involve issues to dispute, I find this to be a strange concern for a
79 regulator to elevate over proportionality and getting the incentives right. Calculating the
80 actual cost (or harm or benefit) is what regulatory processes are meant to accomplish. The
81 fixed penalty plus incremental cost is an extension of the broad principle that the rate should
82 correlate to the cost, and the penalty should correlate to the harm. By contrast, the multiplier
83 method preferred by Spire will have only an accidental correlation to actual harm. Thus, it
84 sacrifices accuracy for alleged ease of calculation, which seems a bad trade-off in regulatory
85 policy terms.

86 **Q. Do you have any other concerns about their respective rebuttals?**

87 A. Yes, I think both Mr. Powers and Ms. Crowe have given short shrift to Missouri regulatory

88 policy recognizing the benefits of RGMs and transportation customers. Missouri opened up the
89 gas LDCs to RGM competition by regulatory policy and express legislative direction as to school
90 districts Section 393.310 R.S.Mo. When OFO penalties become potentially ruinous, this
91 presents a high barrier to RGMs serving Missouri customers. It represents a penalty risk that
92 neither the RGMs nor the transportation customers can anticipate or insure against. Thus, the
93 end outcome is a flat out subversion of Missouri's regulatory support for the opportunities and
94 competitive benefits brought about by RGMs.

95 **Q. So neither Mr. Powers nor Ms. Crowe have moved you from your conclusion that the OFO**
96 **penalty should be reformed to follow a "fixed penalty plus incremental cost incurred" method?**

97 A. No, and as I said, both witnesses end up making my point in different way. Mr. Powers
98 points to upstream OFO penalty clauses that use the Spire multiplier method, but the fixed
99 penalty plus incremental cost method addresses his concern that Spire might be left holding the
100 bag on upstream penalties caused by RGMs. Furthermore, the status quo method he prefers
101 suffers from the grave defects we now know were embedded in the multiplier times index OFO
102 method; namely, that the penalties become disproportionate, ruinous and do not serve their
103 intended end. Ms. Crowe, meanwhile, is concerned that not having severe enough penalties will
104 disserve Spire and LDCs with fixed penalty plus incremental cost penalties. As I said, this is a
105 principle that permits no limits and would encourage an arms race between jurisdictions as to
106 which one can be the most punitive so gas heads their way. The fact we have not seen such arms
107 races between LDCs with different OFO penalty formats is telling, however. Fortunately, at

108 times of crisis, all segments of the industry for the most part have done their best to ensure gas is
109 flowing to customers who need it. Because the multiplier OFO penalties do not enhance that
110 incentive for responsible, publicly interested behavior is another reason they do not serve the
111 regulatory ends the Commission has.

112 **Q. Does this conclude your testimony?**

113 **A.** Yes, it does.

